IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 563 OF 2006.
WITH
CIVIL APPLICATION NO. 730 OF 2006.

Mr. Sumukh Anthony Dias. ..Appellant.
vs.
Anthony B. Dias & ors. ..Respondents.

Mr.Atul Rajadhyaksha, Senior Counsel with N.V. Gangal for the appellant.

Mr B. B. Parikh for respondent No.1.

Mr. Yogendra Kanchan for respondent No.2.

CORAM : A.M. KHANWILKAR, J.

DATED : 3.8.2006.

P.C. :

. Heard learned Counsel for the parties.

2. Admit. By consent taken up for hearing forthwith, as short question is involved in this appeal. Mr. Parikh waives service for respondent No.1. Mr. Kanchan waives service for respondent No.2.

3. This appeal from order takes exception to the judgment and order dated July 14, 2005 in Notice of Motion No. 197 of 2006 in L.C. Suit No. 3129 of 2006. By this order, the Court below refused to grant ad-interim reliefs as claimed. The only reason which has weighed with the Court below was that, essentially the dispute is between plaintiff

and defendant Nos. 1 and 2 and that cannot be the basis to question the correctness of IOD. No other reason is recorded in the impugned judgment to refuse to grant ad-interim relief, during pendency of the Notice of Motion.

4. Having perused the relevant documents and pleadings on record, in my view, the Court below has misdirected itself. In my opinion, however, having regard to the documents placed on record (Ex.C), being an order issued by the Additional Collector and Competent Authority in exercise of power under Urban Land Ceiling Act, communicating that the appellant has share in the suit property, it was necessary to preserve his interest in some manner.

5. Counsel for defendant No.1, however, contends that the appellant is not entitled to any relief whatsoever as for the same cause of action, appellant had filed earlier suit being Suit No.5355 of 2005. However, in my opinion, all these aspects can be answered at the hearing of Notice of Motion. For the time being, appellant is entitled to limited protection in the following terms:

a. The defendant No.2, developing property may carry out construction activities on the site,

entirely at his risk, costs and consequences and he shall not claim any equity at a later point of time.

b. Besides, defendant No.2 shall not create any third party interest in the building under construction until the disposal of the notice of motion or the trial Court was to pass appropriate order as may be required after hearing the parties.

c. Defendant No.1 also shall not create third party right title or interest in any part of the premises till disposal of the notice of motion.

6. Hearing of the notice of motion is expedited, as I am informed that defendant No.1 has filed reply. Rejoinder if any, shall be filed before the trial Court within 10 days from today. Notice of Motion shall be disposed of by the trial Court by the end of September 2006. This direction is issued on the assurance given by the parties that they will fully cooperate with the trial Court for early disposal of the notice of motion. It is made clear that notice of motion shall be decided on its own merits in accordance with law, uninfluenced by the observations made in the impugned order as also in the present order.

7. Appeal stands disposed of in terms of the above order with no order as to costs. Civil Application is also disposed of.

(A.M. KHANWILKAR,J.)